

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** August 23, 2019

Thru: Bridget C. Bohac, Chief Clerk
Toby Baker, Executive Director

From: Tonya Baer, Deputy Director
Office of Air

Docket No.: 2019-0267-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 115, Control of Air Pollution from Volatile Organic Compounds
VOC RACT Rules for the HGB and DFW 2008 Eight-Hour Ozone
Nonattainment Area Reclassifications
Rule Project No. 2019-075-115-AI

Background and reason(s) for the rulemaking:

The Federal Clean Air Act (FCAA) requires states to submit plans to demonstrate attainment of the National Ambient Air Quality Standards (NAAQS) for nonattainment areas with a classification of moderate or higher. The Dallas-Fort Worth (DFW) 2008 eight-hour ozone NAAQS nonattainment area, consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, and the Houston-Galveston-Brazoria (HGB) 2008 eight-hour ozone NAAQS nonattainment area, consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, were designated moderate nonattainment for the 2008 eight-hour ozone NAAQS of 0.075 parts per million (ppm) with a July 20, 2018 attainment date. Based on 2017 monitoring data¹, the DFW and HGB areas did not attain the 2008 eight-hour ozone NAAQS and did not qualify for a one-year attainment date extension in accordance with FCAA, §181(a)(5)². On August 7, 2019, the United States Environmental Protection Agency (EPA) signed the final notice reclassifying the DFW and HGB areas to serious ozone nonattainment areas.

Since the DFW and HGB areas have been reclassified by the EPA, the state will be required to submit a state implementation plan (SIP) revision to fulfill the volatile organic compounds (VOC) reasonably available control technology (RACT) requirements mandated by FCAA, §172(c)(1) and §182(b)(2). The EPA's *Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements; Final Rule*, published in the *Federal Register* on March 6, 2015 (80 FR 12264), specifies an attainment date of July 20, 2021 for serious nonattainment areas. Depending on the classification of an area designated nonattainment for an ozone NAAQS, the major source threshold that determines what sources are subject to RACT

¹ The attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date.

² An area that fails to attain the 2008 ozone NAAQS by its attainment date would be eligible for the first one-year extension if, for the attainment year, the area's 4th highest daily maximum eight-hour average is at or below the level of the standard (75 parts per billion (ppb)); the DFW area's fourth highest daily maximum eight-hour average for 2017 was 77 ppb as measured at the Dallas North No. 2 monitor (C63/C679), and the HGB area's fourth highest daily maximum eight-hour average for 2017 was 79 ppb as measured at the Conroe Relocated monitor (C78/A321). The DFW area's design value for 2017 was 79 ppb and the HGB area's design value for 2017 was 81 ppb.

Re: Docket No. 2019-0267-RUL

requirements varies. Under the 1997 eight-hour ozone NAAQS, the DFW area consisted of nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) and was classified as a serious nonattainment area. The EPA's implementation rule for the 2008 eight-hour ozone NAAQS requires retaining the most stringent major source emission threshold for sources in an area to prevent backsliding (80 FR 12264). For this reason, the major source emission threshold remains at the level required for serious nonattainment areas, which is the potential to emit (PTE) of 50 tons per year (tpy) of VOC. Wise County was not part of the DFW 1997 eight-hour ozone NAAQS nonattainment area but was included as part of the DFW 2008 eight-hour ozone NAAQS nonattainment area; therefore, the major source threshold for Wise County is based on a classification of moderate under the 2008 standard, which is the PTE of 100 tpy of VOC. With the reclassification of the DFW area to serious nonattainment under the 2008 eight-hour ozone NAAQS, the major source emission threshold for all 10 counties, including Wise County, is the PTE of 50 tpy of VOC emissions. This proposed rulemaking would implement RACT in Wise County to reflect this change in the major source threshold for Wise County. Although the HGB area was also reclassified to serious nonattainment for the 2008 eight-hour ozone NAAQS, staff has determined that RACT is in place for all emission source categories in the HGB area; therefore, there are no changes proposed in this rulemaking to implement RACT in the HGB area.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed rulemaking would revise Chapter 115, Subchapter B, Division 1, Storage of Volatile Organic Compounds, to implement VOC RACT for major source fixed roof oil and condensate storage tanks in Wise County. The proposed rule revisions would address major source storage tanks in Wise County by requiring fixed roof oil and condensate tanks with at least 50 tpy of uncontrolled VOC emissions from flashed gasses to operate a control device achieving at least 95% efficiency. In addition, these newly affected storage tanks would be required to comply with associated inspection, repair, testing, and recordkeeping requirements. Compliance with RACT requirements must be achieved no later than July 20, 2021. The proposed rule amendments would ensure that the FCAA mandates for VOC RACT are in place for the DFW area.

The rulemaking would not propose amendments to implement RACT for other emission source categories based on a determination by the executive director's staff, after analyzing the point source emissions inventory, Title V permits, new source review permits, and central registry databases, that there would be no other affected sources that would meet the rule applicability or that would be affected by the rule requirements.

The proposed rulemaking would include technical revisions intended to correct inadvertent errors in Chapter 115, Subchapter E, Division 2, Surface Coating Processes, made during a previous Chapter 115 VOC RACT rulemaking (Rule Project No. 2013-048-115-AI, 40 TexReg 3907, June 19, 2015), to ensure consistency with the agency's intent. The proposed rulemaking would revise two tables in §115.421 to correct inadvertent errors made to the emission limits applicable to the surface coating of miscellaneous

Re: Docket No. 2019-0267-RUL

metal parts and products and the vehicle wipe-down solutions category. Non-substantive revisions would also be proposed as part of this rulemaking to remove obsolete language.

B.) Scope required by federal regulations or state statutes:

The proposed rulemaking would implement RACT for major sources of VOC emissions, as mandated by FCAA requirements. FCAA, §172(c)(1) requires the state to submit a SIP revision that incorporates all reasonably available control measures, including RACT, for sources of relevant pollutants. FCAA, §182(b)(2) requires the state to submit a SIP revision that implements RACT for all emission sources addressed in Control Techniques Guidelines (CTG) and all non-CTG major sources of VOC, including emission sources covered in an Alternative Control Technology document. The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761).

C.) Additional staff recommendations that are not required by federal rule or state statute:

In addition to implementing RACT requirements for the DFW area, the proposed rulemaking would include technical corrections that would extend to the DFW, Beaumont-Port Arthur, and HGB nonattainment areas as well as El Paso, Gregg, Nueces, and Victoria Counties. The proposed technical corrections would amend errors in §115.421. The proposed amendment would correct the language used in the emission specifications tables for surface coating processes. Because this amendment is to correct a previous error, no practical or RACT impact is expected to result from this rule clarification.

Statutory authority:

The rule amendments would be proposed under Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The rule amendments would also be proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.014, Emissions Inventory, which authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The rule amendments would also be proposed under 42 United States Code, §§7420 *et seq.*, which

Re: Docket No. 2019-0267-RUL

requires states to submit SIP revisions that specify the manner in which the NAAQS will be achieved and maintained within each air quality control region of the state. The EPA published the final rule establishing the NAAQS for ozone in the *Federal Register* on March 27, 2008 (73 FR 16436).

Effect on the:

A.) Regulated community:

The rulemaking may require owners or operators of affected sources in Wise County to install control equipment to meet emission specifications; implement work practices; or comply with monitoring, testing, and recordkeeping requirements. Costs associated with new equipment would be incurred by the owner or operator if the owner or operator were to choose to replace equipment to comply with the proposed rule requirements.

Amendments to the tables in §115.421 are corrections to a previous error and are expected to have no impact on the regulated community outside of the clarification of the rule.

B.) Public:

The public may benefit from improved air quality.

C.) Agency programs:

The rulemaking may increase the workload for Office of Compliance and Enforcement staff when inspecting affected facilities to verify compliance with any new or revised Chapter 115 requirements. Staff from the Environmental Law Division would be solicited for legal advice.

Stakeholder meetings:

No stakeholder meeting is planned for this rulemaking, but public hearings in Houston and Arlington are planned during the rulemaking public comment period.

Potential controversial concerns and legislative interest:

The EPA's final notice reclassifying areas from moderate to serious for the 2008 eight-hour ozone NAAQS includes two RACT implementation dates: 1) an implementation date of August 3, 2020 for measures necessary to meet reasonable further progress (RFP) or demonstrate attainment; and 2) a RACT SIP submission deadline of August 3, 2020 with an implementation deadline of July 20, 2021 for RACT requirements not otherwise needed to demonstrate attainment. RACT measures are not necessary to meet RFP or demonstrate attainment for the DFW and HGB 2008 eight-hour ozone serious nonattainment areas; therefore, the RACT implementation deadline set for this proposed rulemaking is July 20, 2021, consistent with the EPA's final reclassification notice.

Will this rulemaking affect any current policies or require development of new policies?

This rulemaking would update RACT requirements for Wise County to be consistent with the rest of the DFW ozone nonattainment area and would address an error made during a

Re: Docket No. 2019-0267-RUL

previous rulemaking. The rulemaking would not affect any current policies or require the development of new policies.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

FCAA, §172(c)(1) and §182(b)(2) require the state to submit a SIP revision implementing RACT for all CTG emission source categories and all non-CTG major sources of VOC in the DFW and HGB areas. Failure to submit a SIP revision for each area could result in sanctions or promulgation of a federal implementation plan. Sanctions could include transportation funding restrictions, grant withholdings, and increased emissions offset requirements for new construction and major modification of stationary sources in the DFW and HGB ozone nonattainment areas.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: September 11, 2019

Anticipated *Texas Register* publication date: September 27, 2019

Anticipated public hearing dates (if any): October 14, 2019 and October 17, 2019

Anticipated public comment period: September 13, 2019 - October 28, 2019

Anticipated adoption date: March 4, 2020

Agency contacts:

Graham Bates, Rule Project Manager, Air Quality Division, (512) 239-2606

Amy Browning, Staff Attorney, (512) 239-0891

Paige Bond, Texas Register Rule/Agenda Coordinator, (512) 239-2678

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Martha Landwehr
Office of General Counsel
Graham Bates
Paige Bond